

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS

FRATERNAL ORDER OF POLICE)
LODGE 74,)
Petitioner,)
v.)
CITY OF CRETE, A Political)
Subdivision of the State of Nebraska,)
Respondent.)

Case No. 1338

FINAL ORDER

NEBRASKA COMMISSION
OF INDUSTRIAL RELATIONS
FILED

NOV 13 2014

CLERK

APPEARANCES:

For Petitioner

Gary L. Young
Keating, O’Gara, Nedved & Peter, PC, LLO
530 South 13th Street, Ste 100
Lincoln, NE 68508

For Respondent

Jerry L. Pigsley
Harding & Shultz, P.C., L.L.O.
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P.O. Box 82028
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Before Commissioners Spray, Lindahl and Pillen

NATURE OF THE CASE

On September 25, 2014, Petitioner, Fraternal Order of Police Lodge 74 (“Petitioner” or “Union”), filed a request with the Commission seeking a Post-Trial Conference pursuant to NEB. REV. STAT. § 48-816(7)(d) (Cum.Supp. 2012). A hearing was held on October 3, 2014. Petitioner was represented by its attorney, Gary L. Young, and Respondent, City of Crete (“City” or “Respondent”), was represented by its attorneys, Jerry L. Pigsley and Kelley M. Ekeler (together with Petitioner, the “Parties”).

Under NEB. REV. STAT. § 48-816(7)(d), a post-trial conference may be requested in order for the Commission to hear from the Parties on portions of the decision and order which were not based upon or which mischaracterized the evidence in the record and allow the Commission to correct any such errors. Petitioner raised two issues during the Post-Trial Conference for the Commission to clarify in its Findings and Order dated September 3, 2014: Court Attendance Pay, and Pay Administration. The Parties waived the 10 day requirement for the entry of the

Commission's Final Order in order to allow Respondent additional time to respond to Petitioner's issues. Respondent filed its response on October 10, 2014. The case is deemed submitted. The Commission shall consider each issue below.

Court Attendance Pay

In its first issue, Petitioner argued that the Commission's Order did not correctly reflect the Parties' agreement on the treatment of court attendance pay for employees. On page 13 of the Findings and Order, the Commission ordered no change in the City's current practice regarding court attendance pay. Crete's current practice is to pay employees a minimum amount of 2 hours pay at the regular rate per hour. Petitioner directed the Commission's attention to the joint stipulation for trial filed by the parties on December 5, 2013, which illustrated that the parties agreed that Crete should instead provide employees a minimum amount of 2 hours pay at a rate of 1.5 times the base rate per hour. Therefore, the Commission shall correct its order to eliminate Court Attendance Pay as a comparable fringe benefit and instead recognize it as a non-comparable fringe benefit per agreement of the Parties. Item 13 on page 17 of the Order shall be amended to read: "Respondent shall continue to provide a minimum of 2 hours court attendance pay, and shall increase the rate from 1.0 to 1.5 times the base rate per hour." As Table 25 reflects the correct numerical figures, the table shall not be changed.

Pay Administration

In its second issue, Petitioner asked for additional clarification of the Commission's Order regarding an employee's placement upon the pay plan. On page 10 of the Order, the Commission ordered that bargaining unit employees should be placed on the pay plan based upon an employee's years of service at a step for which such employee has qualified by time in service of the contract date, October 1, 2012. Petitioner states that this is correct, but requests that the Commission clarify whether it meant to include or exclude testimony from Petitioner's expert, Paul Essman, regarding pay plan placement. Petitioner refers to Mr. Essman's statements that an employee should be placed on the pay line not only for the years of service, but also be given credit for the actual step at which the employee was placed as of the contract date. Petitioner argues that this clarification takes into account situations where an employee may have

been at a higher step in October 2012 than what would be expected based upon years of service because that particular employee had been hired at a higher step and moved along accordingly.

Respondent contends that Petitioner's request is not the proper subject matter for a Post-Trial Conference as the argument does not focus on the statutory reasons for requesting a Post-Trial Conference under § 48-816(7)(d)- to correct an error or a mischaracterization of the evidence. Additionally, Respondent argues that the Commission's Order is clear and no further clarification is necessary. We agree with Respondent in that Petitioner's request for additional clarification is beyond the scope of the limited purpose for a Post-Trial Conference. We therefore decline to make any changes to the Findings and Order regarding pay administration in Crete.

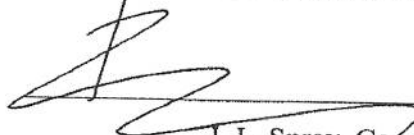
IT IS THEREFORE ORDERED that Petitioner's request to amend the Findings and Order of September 3, 2014 is sustained in part and declined in part and such Order shall be as stated herein. It is the Final Order of the Commission that:

1. Page 13 shall be amended to eliminate Court Attendance Pay as a comparable fringe benefit, and Court Attendance Pay shall be listed as a non-comparable fringe benefit which is listed beginning at page 14 of the Order.
2. Page 17 of the Order, item 13 shall be amended to read: "Respondent shall continue to provide a minimum of 2 hours court attendance pay, and shall increase the rate from 1.0 to 1.5 times the base rate per hour."
3. There shall be no change to the Commission's Findings and Order regarding Pay Administration.

All panel Commissioners join in the entry of this Final Order.

Entered November ¹⁴13 2014.

NEBRASKA COMMISSION OF INDUSTRIAL RELATIONS


J. L. Spray, Commissioner